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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PIONEER AMERICAS LLC,
Plaintiff/Counter-Defendant,

v.

SAGUARO POWER COMPANY, A
LIMITED PARTNERSHIP, EASTERN
SIERRA ENERGY COMPANY,
BLACK MOUNTAIN POWER
COMPANY, LLC and
PARAGON SAGUARO LLC

2:10-cv-01402-RLH-(LRL)

**DISCOVERY PLAN AND
SCHEDULING ORDER
SUBMITTED IN
COMPLIANCE WITH FRCP
26(f) and LR 26-1(e)**

**[SPECIAL SCHEDULING
REVIEW REQUESTED]**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure ("FRCP") and Local Rule 26-1, Plaintiff Pioneer Americas LLC ("Plaintiff" or "Pioneer") and Defendants Saguaro Power Company, Eastern Sierra Energy Company, Black Mountain Power Company, LLC and Paragon Saguaro LLC (Defendants" or collectively "Saguaro"), by and through their respective counsel of record, hereby submit this joint Rule 26(f) Report ("Discovery Plan").

I. LOCAL RULE 26-1(d) STATEMENT RE SPECIAL SCHEDULING REVIEW

Plaintiff's Amended Complaint and Defendants' Counterclaims relate to one in a series of contracts between the parties involving Plaintiff's chlor-alkali facility and Defendants' adjacent electricity and steam co-generation facility in Henderson, Nevada. Plaintiff contends that a 1991 contract, as since amended, provides for the sale to Defendants' facility of certain quantities of hydrogen gas that is generated in Plaintiff's manufacturing process. Plaintiff further contends that the contract requires the Defendants to either take the full contract quantity of hydrogen gas if tendered to Defendants or to pay for that tendered contract quantity even if not taken, and that Plaintiff has, in fact, tendered hydrogen per the contract. In their Counterclaims, Defendants contend that the contract has been modified by the parties' course of performance so that there is no "take or pay" obligation, or in the alternative, that Plaintiff has waived its ability to enforce the "take or pay" provision of the contract by its failure to do so in the past, and seek a declaratory judgment to that effect. Defendants also seek a declaratory judgment that the word "tender," as used in the contract, requires Plaintiff to deliver hydrogen gas of a specific quality and at a specific pressure, among other things, and that Plaintiff has failed to do so.

To resolve the issues in the case, the parties will need to locate, retrieve and review historical production records that relate to the quantum of hydrogen available for consumption at the Defendants' co-generation facility over an extended period of years,

1 the quantum of hydrogen consumed by the Defendants, the pressure at which the
2 hydrogen was maintained and tendered, the bases for the historical invoicing of
3 hydrogen, and documents relating to the design, construction and engineering of
4 Defendants' facility at the time it was built in the late 1980s and early 1990s. The parties
5 also anticipate depositions of individuals with knowledge of these issues. The parties
6 have already begun to identify and locate relevant documents, data, and individuals, but
7 anticipate that it will be time consuming given the volume of historical material to locate,
8 review and evaluate.
9

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11
12 Accordingly, the parties respectfully request a 240-day fact discovery period,
13 extending to July 29, 2011.

14
15 The parties believe that expert testimony will be required and that the experts'
16 opinions will depend to a large extent on the documents and testimony disclosed during
17 fact discovery. Accordingly, the parties request that following the close of fact
18 discovery, there be a 90 day period for disclosure of expert reports and expert
19 depositions, extending to October 21, 2011.
20

21 **II. INITIAL DISCLOSURES [Rule 26(f)(3)(A)]**

22
23 Pursuant to Rule 26(a)(1)(A)(i), the parties agree to exchange the information
24 regarding party witnesses only by December 17, 2010. The information set forth in Rule
25 26(a)(1)(A)(iii) has already been provided as exhibits to the Amended Complaint. The
26 parties agree to forgo the exchange of information set forth in Rule 26(a)(1)(A)(ii).
27
28

1 **III. DISCOVERY PLAN [Rule 26(f)(3)(B)]**

2 Discovery is needed for all issues raised in Plaintiff's Amended Complaint and
3 Defendants' Answer and Counterclaims.
4

5 A. Fact Discovery Cut-Off: July 29, 2011.

6 B. Limitations on Discovery: Plaintiff and all Defendants as a group shall be
7 limited to 15 depositions each plus Rule 30(b)(6) depositions. Depositions shall be
8 limited to 7 hours.
9

10 **IV. DISCLOSURE OR DISCOVERY OF ELECTRONICALLY-STORED**
11 **INFORMATION [Rule 26(f)(3)(C)]**

12 The parties are unaware of any issues regarding the disclosure or discovery of
13 electronically-stored information at this point.
14

15 **V. OTHER MATTERS**

16 A. Claims of privilege or protection [Rule 26(f)(3)(D)]

17 The parties will prepare an agreed upon protective order to present to the Court.
18

19 B. Amending pleadings and adding parties [LR 26-1(e)(2)]: April 29, 2011

20 C. Expert disclosures [LR 26-1(e)(3)]

21 1. Initial Expert Disclosures: September 2, 2011

22 2. Rebuttal Expert Disclosures: October 4, 2011

23 3. Expert Discovery Cutoff: October 21, 2011.

24 D. Dispositive Motions [LR 26-1(e)(4)]: November 18, 2011

25 E. Joint Pre-Trial Order [LR 26-1(e)(5)]: December 23, 2011
26

27 In the event that the Court has not yet issued a decision regarding a dispositive
28 motion prior to the date for filing the joint pretrial order, that deadline shall be suspended

1 until thirty (30) days after the decision of the dispositive motions or further order of the
2 Court.

3
4 **IT IS SO ORDERED**

5
6 Dated: December 16, 2010.


UNITED STATES MAGISTRATE JUDGE

8 **Submitted By:**

9
10 Dated: December 1, 2010.

LIONEL SAWYER & COLLINS

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ALKALI PRODUCTS

1 Dated: December 1, 2010

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17 COMPANY, BLACK MOUNTAIN POWER
18 COMPANY LLC AND PARAGON
19 SAGUARO LLC
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CERTIFICATE OF SERVICE

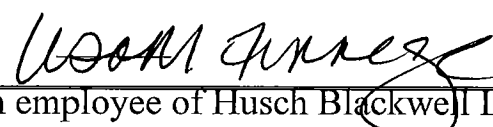
I HEREBY CERTIFY that I am an employee of Husch Blackwell LLP, and on this 1st day of December, 2010, I caused a true and correct copy of the Discovery Plan and Scheduling Order Submitted in Compliance with FRCP 26(f) and LR 26-1(e) to be served electronically via the U.S. District Court's CM/ECF system upon the parties listed on the U.S. District Court's Notice of Electronic Filing ("NEF") service list in the above-captioned case.

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